

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

CURTIS LEE JOHNSON
TDCJ-CID #1297699

v.

BRAD LIVINGSTON

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C.A. NO. C-05-519

**MEMORANDUM AND RECOMMENDATION
ON PETITIONER'S MOTION TO PROCEED *IN FORMA PAUPERIS***

Petitioner has filed an application to proceed *in forma pauperis* in this habeas corpus proceeding. (D.E. 7).¹ Although petitioner indicates that he does not have any money in a prison account, his application indicates that he has currently in his inmate trust fund account the sum of \$92.02. Id. at 4. Moreover, in each of the last five months, he has had deposits in excess of \$100. Id. The filing fee for a habeas corpus petition is \$5.00.

It is respectfully recommended that petitioner be found not indigent and that his application to proceed *in forma pauperis*, (D.E. 7), be denied. It is further respectfully recommended that petitioner be instructed to pay the filing fee within twenty (20) days of the date of entry of an order adopting this memorandum and

¹ This is petitioner's second application to proceed *in forma pauperis*. See (D.E. 2). On October 31, 2005, the below signed magistrate judge recommended that his first application to proceed *in forma pauperis* be denied. See (D.E. 6).

recommendation, or voluntarily dismiss the petition. Finally, it is respectfully recommended that petitioner be advised that failure to pay the fee within the time period prescribed may result in dismissal of his petition for failure to prosecute.

Respectfully submitted this 7th day of November 2005.



BRIAN L. OWSLEY
UNITED STATES MAGISTRATE JUDGE

NOTICE TO PARTIES

The Clerk will file this Memorandum and Recommendation and transmit a copy to each party or counsel. Within **TEN (10) DAYS** after being served with a copy of the Memorandum and Recommendation, a party may file with the Clerk and serve on the United States Magistrate Judge and all parties, written objections, pursuant to 28 U.S.C. § 636(b)(1)(C); Rule 72(b) of the Federal Rules of Civil Procedure; Rule 8(b) of the Rules Governing § 2254 Cases; and Article IV, General Order No. 2001-6, United States District Court for the Southern District of Texas.

A party's failure to file written objections to the proposed findings, conclusions, and recommendations in a magistrate judge's report and recommendation within TEN (10) DAYS after being served with a copy shall bar that party, except upon grounds of *plain error*, from attacking on appeal the unobjected-to proposed factual findings and legal conclusions accepted by the district court. Douglass v. United Servs. Auto. Ass'n, 79 F.3d 1415 (5th Cir. 1996) (en banc).